Supreme Court, U.S.
FILED

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No._____

In The

Supreme Court of the United States

Diana Andrews,
Petitioner
v.
Jeffrey Allen Andrews,
Respondent

On Petition For Writ of Certiorari
To The Arizona Supreme Court

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Whether the trial court's appointment of a guardian ad litem to conduct an investigation and make recommendations regarding child custody and parental access violated the 14th Amendment protection of Petitioner's parental right of custody and control of her children.

2. Whether the trial court's decision to conduct a trial on the issue of child custody, when the court-appointed guardian ad litem provided the parties with his report containing custody and access recommendations five minutes prior to the trial, violated Petitioner's 14th Amendment due process rights.

Table of Contents

Table of Cited Authorities iii
Citations of the Opinions in this Case..... iv
Statement of Jurisdiction..... 1
Notice of Service Pursuant to Rule 29..... 6
Constitutional Provisions..... 6
Material Facts of the Case..... 6
Argument for Question 1 11
Argument for Question 2 18
Conclusion 21
Signature 22
Appendix..... 23
Minute Entry/Order entered 01/30/03..... 24
Minute Entry/Order entered 03/20/03..... 30
Minute Entry entered 05/28/03 34
Decree of Dissolution of Marriage 38
AZ Court of Appeals Order entered 07/23/03 44
AZ Supreme Court Order entered 10/28/03... 45
AZ Supreme Court Order entered 10/29/03... 46

Table of Cited Authorities

Clark v. Clark, 953 P.2d 145 (Wyo. 1998) 4

Shainwald v. Shainwald, 395 S.E. 2d 441
(S. C. CT. App. 1990) 5

Stewart v. Superior Court, 78 P.2d 125
(Ariz.App. 1989) 2, 11

Troxel v. Granville, 120 S.Ct. 2054, 530 U.S. 57,
147 L.Ed.2d 49 (2000) 11, 12

Veazey v. Veazey, 560 P.2d 382 (Alaska 1977) 4

U.S. CONST. Amend. XIV, § 1 ..... 1, 2, 3,
6, 10, 11,
12, 13,
14, 18,
19, 20

Rule 10, Rules of the Supreme Court of the United
States 6

A.R.S. §25-403 (a) (2002) 9

Maricopa County Local Rule 6.13 (a) 3

Citations of the Published and Unpublished Opinions and Orders in this Case

Maricopa County Superior Court Minute Entry/Order entered January 30, 2003 by the Hon. Edward O. Burke

Maricopa County Superior Court Minute Entry/Order entered March 10, 2003 by the Hon. Edward O. Burke

Maricopa County Superior Court Minute Entry entered May 23, 2003 by the Hon. Edward O. Burke

Decree of Dissolution of Marriage (With Minor Children) entered May 23, 2003 by the Hon. Edward O. Burke

Arizona Court of Appeals, Division One, Order declining to accept jurisdiction of special action, entered July 23, 2003

Arizona Supreme Court Order denying Petition for Review, entered October 28, 2003

Arizona Supreme Court Order declining to accept jurisdiction of Petition for Special Action, entered October 29, 2003

Statement of Jurisdiction

On October 28, 2003, the Arizona Supreme Court denied Petitioner's Petition for Special Action and Petition for Review. The petitions filed with the Arizona Supreme Court followed the denial of a Petition for Special Action filed with the Arizona Court of Appeals, Division One, which appeal was taken from orders of the Maricopa County Superior Court. The appeal involves a child custody issue, which gives rise to special action jurisdiction in the Arizona appellate courts. In cases appealed by special action, both the Arizona Court of Appeals and the Arizona Supreme Court have the authority to decline jurisdiction without comment on the merits, which has occurred in this case.

Petitioner challenges the trial court's order appointing a guardian ad litem as violating the 14th Amendment protection of her fundamental right as a parent to make decisions regarding the care, custody and control of her children. Petitioner further submits her 14th Amendment procedural due process rights were violated by requiring her to participate in a custody trial when she was provided the guardian ad litem's report containing his custody and access recommendations five minutes before the trial. Petitioner raised and briefed both issues in the trial court, the court of appeals, and the state supreme court without an acknowledgement or discussion of the merits of Petitioner's arguments.. Petitioner has no other remedy to address the constitutional infringements presented herein.

The issues have nationwide importance as they have been argued extensively in many state courts without uniform resolution, often without recognition of the significant constitutional rights involved, and frequently with the admission that there is no clear definition or understanding of the guardian ad litem role and authority. The issues of the appropriate appointment, powers, and limitations of a guardian ad litem and procedural due process requirements for disclosure of their opinions and

recommendations are matters of first impression with this Court.

The underlying action involves a dissolution of marriage, where the trial court entered orders regarding custody and access based upon the recommendation of a guardian ad litem. This particular case is appropriate for review because it contains a record that graphically demonstrates the variety of constitutional abuses inherent in the guardian ad litem appointments that have been reported in numerous child custody cases across the United States.

A review of state statutes and appellate court opinions related to the appointment and powers of guardians ad litem further demonstrates that this appointment is often allowed and endorsed in circumstances that violate parents' fundamental liberty interest in the care, custody and control of their children. This review also reveals it is commonplace to allow the reports of the guardians ad litem to be submitted to the trial courts with little, if any, advance notice to the parties.

In Arizona, the confusion over guardian ad litem appointments is demonstrated by the conflict between case law and court rules. In 1989, the Arizona Court of Appeals recognized the 14th Amendment's limitation on guardian ad litem appointments, and determined that a guardian ad litem may be appointed only upon a showing that the children's parents, by conflict or otherwise, may be unable or unwilling to perceive or advance their children's best interests.[1] However, subsequent to this opinion, Arizona has followed the national trend of expanding the role of guardians ad litem, and such appointments have now become a popular mechanism for evaluating child custody disputes. This trend culminated in the superior court adopting a court rule that allows the appointment of a guardian ad litem in nearly every case involving a custody dispute.

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[1] *Stewart v. Superior Court*, 787 P.2d 126 (Ariz.App.1989)

Rule 6.13(a), Maricopa County Local Rule, provides as follows:

> "In any proceeding under these rules involving children, the court may appoint a guardian ad litem to protect a child's best interests if it finds any of the following:
> 1. There is an allegation of abuse or neglect of a child;
> 2. The parents are persistently in conflict with one another;
> 3. There is a history of parental alienation, substance abuse by either parent, or family violence;
> 4. There are serious concerns about the mental health or behavior of either parent;
> 5. The children include infants or toddlers; or
> 6. A child has special needs."

This rule of court allows the appointment of a guardian ad litem based only upon the allegation of abuse or neglect, even if it is not supported by objective evidence. The rule allows an appointment when the parents are "persistently in conflict with one another," which is vague language that could be applied to virtually any custody dispute. The rule also allows the appointment of a guardian ad litem when the case involves infants, toddlers or a child with special needs, without regard to whether there is any conflict between the parties or danger to the children. Relative to the instant action, the rule clearly authorized the trial court's appointment of a guardian ad litem, because there was an allegation of neglect. It is equally clear that this court rule on its face conflicts with the Fourteenth Amendment protection of a parent's fundamental liberty interest in the care, custody and management of their children. It also indicates that Arizona, as a trial court

practice, has abandoned following its own court of appeals' decision limiting the appointment of guardians ad litem.

A brief review of other state statutes, appellate court opinions, legislative investigations, and ethics opinions reveals the nationwide confusion regarding guardian ad litem appointments.

The Wyoming Supreme Court has bluntly acknowledged their own confusion regarding the issues surrounding the appointments of guardians ad litem and has urged their state courts, legislators, professionals and concerned citizens to address this issue for the benefit of Wyoming's children.[2]

In Minnesota, the state legislature directed the Office of the Legislative Auditor to evaluate guardian ad litem services. This agency found:

> "There is not a universally understood or consistently applied definition of the appropriate roles and responsibilities for guardians in Minnesota, leading to frequent confusion and differing expectations."[3]

The Alaska Supreme Court has determined it cannot provide a definite rule to guide the trial courts in determining whether a guardian ad litem should be appointed.[4]

In Delaware, an attorney sought guidance from the Delaware State Bar regarding the ability to conduct oneself ethically as a guardian ad litem under that state's professional ethics. The responsive ethics opinion acknowledged the potential ambiguity of the role of a guardian ad litem, and suggested the attorney could withdraw as the guardian ad litem due to the internal conflict

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[2] *Clark v. Clark*, 953 P.2d 145 (Wyo.1998).

[3] *Guardians ad Litem, Executive Summary*, Office of the Legislative Auditor, State of Minnesota (1995).

[4] *Veazey v.Veazey*, 560 P.2d 382 (Alaska 1977).

of the role, or alternatively suggested the Delaware Supreme Court could modify the ethical rules to account for the ambiguous role of the guardians ad litem.[5]

Alaska, Arizona, the District of Columbia, Georgia, Mississippi, Missouri, Washington and possibly other states have statutes that allow appointment of a guardian ad litem when it is in the best interests of the child, without restrictions that would protect the parents' constitutional rights relative to this type of appointment.

In South Carolina, the court of appeals acknowledged a "dearth of caselaw" in their state regarding the proper role of a guardian ad litem in child custody litigation.[6] In this case, there was no discussion of the constitutional component, and the holding left the evaluation of the weight to be given the guardian ad litem opinions to the discretion of the trial court.

The problem of guardian ad litem roles and authority has been the subject of law review articles that have uniformly summarized this appointment as nebulous, as interfering with the fact-finding process and judicial decision making, and as undermining parental authority and privacy. Some ultimately suggest the appointments be abolished in private custody litigation, or at least substantially limited.[7]

This is not intended to be an exhaustive discussion of the states' statutes, appellate court decisions and other publications regarding the appointment and authority of

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[5] Delaware State Bar Association, Commission on Professional Ethics, Opinion 2001-1 (May 8, 2001).

[6] *Shainwald v. Shainwald*, 395 S.E.2d 441 (S.C.CT.App. 1990)

[7] Raven C. Lidman and Betsy R. Hollingsworth, The Guardian Ad Litem in Child Custody Cases: The Contours of Our Legal System Stretched Beyond Recognition, 6 Geo.Mason L.Rev. 255 (1998), Richard Ducote, Guardians Ad Litem in Private Custody Litigation: The Case for Abolition, Loyola Journal of Public Interest Law (2002).

guardians ad litem, but is only intended to demonstrate this is an issue of nationwide importance due to the lack of uniformity in addressing a matter with such significant and often unrecognized constitutional considerations. Moreover, the constitutional issues raised herein have a direct impact on the lives of innumerable parents across the country, given the significant percentage of families that become involved in some form of in child custody litigation.

For the foregoing reasons, Petitioner submits this case is representative of a compelling issue that merits this Court's consideration pursuant to Rule 10, Rules of the Supreme Court of the United States.

Notice of Service Pursuant to Rule 29

This document has been served on the opposing party by First Class mail delivery through the United States Postal Service. Proof of service accompanied this document when it was filed with the United States Supreme Court.

Constitutional Provisions

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Material Facts of the Case

The parties hereto were involved in an action for dissolution of marriage. Mother (Petitioner) filed a Petition for Dissolution of Marriage alleging she was the proper

parent to have custody of the parties' minor children. Mother had been a housewife and had a history of primary care of the parties' children. Father (Respondent) submitted an Answer to Petition for Dissolution of Marriage, requesting that Mother have primary custodial care of the parties' children, and requesting that he have visitation. During a settlement conference, the parties agreed they would have joint legal custody of their children, and that Father would have visitation with the children on alternate weekends, and dinner visits during the week. The parties agreed the children would be in the care of Mother at all other times. Subsequent to this agreement, Father decided to contest the custody issue and the matter was set to trial. Father retained an attorney to represent him at the trial. Mother filed a motion to continue the trial, requested the court order a custody evaluation, and requested additional time to hire an attorney. The trial court denied Mother's motions; therefore, a custody evaluation was not completed, and Mother was unrepresented at trial.

At trial, the court took evidence on all issues relating to the dissolution of marriage, including the issue of custody of the parties' minor children. On the custody issue, Father requested sole custody or alternatively, joint custody of the children until the children could be evaluated, and if they were fine, then he did not oppose Mother having physical custody of the children. Father initially suggested an access schedule whereby the children would spend an equal amount of time with both parents.

The medical records of the children were entered as exhibits at the trial and contained numerous references to the children as "well-appearing," "well-nourished" and "well-developed." A letter from the children's pediatrician approximately a month before trial discussing one of the children, notes the child's weight falls within the normal range, and that he has "never had any concerns regarding malnutrition, abuse or neglect," and "there is no evidence of an eating disorder in this child. . ."

At the conclusion of the trial, the court did not make a final determination on the custody issue, and instead appointed a guardian ad litem to submit a report "regarding recommendations for joint physical custody and/or parenting time. . ." The trial court set a follow-up trial date to address custody of the children. During the interim, the trial court affirmed the joint custody agreement of the parties, which left the children in the primary physical custody of Mother.

The guardian ad litem first visited Mother's home. He gave Mother approximately 20 minutes notice of his visit, and he spent approximately 20 to 30 minutes with Mother and the parties' children. When the guardian ad litem went to Father's home, he gave Father approximately 2 days advance notice of his visit and spent approximately 20 to 30 minutes with Father and the children. This was the extent of the guardian ad litem's investigation.

The guardian ad litem did not contact Child Protective Services, he did not contact the parties' physicians, he did not contact the children's physicians, he did not contact any law enforcement agencies, he did not contact a social worker providing services for one of the children, he did not do any investigation of the "significant other" for either party, and he did not interview the children separately. His investigation was limited to a single, brief interview of each of the parents with their children present.

The guardian ad litem completed a written report and provided the parties with a copy of it approximately five minutes prior to the follow-up custody trial as they were entering the courtroom. The guardian ad litem report contained a recommendation that Father have sole custody of the children with reasonable visitation to Mother. His report focused on the condition of Mother's home, including stains on the floor and dirty clothes laying about. The report did not discuss the factors listed in the state custody statute,

which are required to be considered by the trial court in awarding custody.[8]

Mother objected to the guardian ad litem report at the beginning of the trial. The trial court disregarded the objection and proceeded with the trial. The guardian ad litem's trial avowals coincided with his report, and he did not testify regarding the statutory factors that are required as a basis for a custody order. Father called his father as a witness, the trial court called Mother's fiancé as a witness, and Father testified. Mother was asked by the trial court to respond to the guardian ad litem's report. Mother did not provide any other testimony relative to the best interests of the parties children, nor did she cross examine Father or his witness.

At the conclusion of the follow-up custody trial, the court ordered physical custody of the children be changed immediately from Mother to Father. Mother was awarded alternate weekend access with the children, and one afternoon during the week.

After the trial, Mother filed a motion for a new trial. Oral argument on the Motion for New Trial was set, at which the guardian ad litem discussed his investigation and report. Specifically, the guardian ad litem testified he is not a custody evaluator and did not have any formal training in performing custody evaluations. He acknowledged he did not know exactly what his purpose was in making a custody evaluation, and admitted he was making decisions a custody evaluator should make, not a guardian ad litem. In communicating his understanding of his role, the guardian ad litem stated:

> "My understanding was I was just going to write the report to the Court. I had not - - maybe misunderstood that it was needed to be given to all the parties. I thought I was going

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[8] Ariz.Rev.Stat. §25-403(a)(2002).

> to give actually - - actually a lot of the times I give a report to the Court, it's more or less to indicate to the court whether or not there's an issue of dependency. And as I indicated earlier, it seems now we've started to go out on custody issues, which I think a lot of the guardian ad litems, some are uncomfortable in deciding whether or not they should be involved in custody issues. Our main goal is to find out whether or not there's a parent able to parent children where there's a dependency issue."[9]

The guardian ad litem testified it would be disturbing to him to receive a custody recommendation five minutes before a custody hearing and agreed his recommendation suggesting a change of physical custody from Mother to Father would be a substantial issue for Mother to address.

Following the oral argument regarding the motion for new trial, the trial court denied Mother's Motion for New Trial and approved a Decree of Dissolution of Marriage awarding primary physical custody of the parties' children to Father.

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[9] Trans. for Oral Arg. Re: Petitioner's Motion for New Trial, May 21, 2003, p. 17, l. 15 - 22.

Argument for Question 1

I. The trial court's appointment of a guardian ad litem to conduct an investigation and make recommendations regarding child custody and parental access violated the 14th Amendment protection of Petitioner's parental right of custody and control of her children.

A. There was not an overriding state interest that warranted an infringement upon Petitioner's protected parental rights.

This Court has determined that the Due Process Clause of the 14th Amendment protects the fundamental right of parents to make decisions regarding the care, custody and control of their children.[10] This Court recognizes the presumption that fit parents act in the best interests of their children, and has held that states are not allowed to infringe upon parents rights to make decisions regarding the care of their children just because a state judge believes better decisions could be made.[11] This Court has not addressed the relationship between the 14th Amendment protection of parents' rights to make decisions regarding the care, custody and control of their children and the appointment of guardians ad litem in child custody actions.

The Arizona Court of Appeals has acknowledged parents' Fourteenth Amendment protection, and has applied it to circumstances involving guardians ad litem. Specifically, the court of appeals has held that the appointment of a guardian ad litem involves an interference with a parent's fundamental liberty interest in the care, custody and management of their children.[12] This court

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[10] *Troxel v. Granville*, 120 S.Ct. 2054, 530 U.S. 57, 147 L.Ed.2d 49 (2000)

[11] *Id.*

[12] *Stewart v. Superior Court*, 787 P.2d 126 (Ariz. 1990)

further determined that a guardian ad litem may be appointed only upon a showing that the children's parents, by conflict or otherwise, may be unable or unwilling to perceive or advance their children's best interests.[13] The Arizona Court of Appeals provided the following summary of its view of a guardian ad litem appointment.

> "Guardianship appointment is a form of interference with the parents' protected sphere. Parental power to make a category of decisions in the child's best interest is suspended by court order; and the court substitutes the decisions of a stranger for decisions that the parents might otherwise make. Such an invasion, albeit temporary and limited, must, like any other, be shown to be justified by an overriding interest of the state."

In this case, the court of appeals reversed the appointment of a guardian ad litem in a circumstance where the children's parents were criminally charged; the father being charged with sexually molesting one of the children, and the mother being charged with intentionally or knowingly placing that child in a situation that endangered her health. Even with these aggravated allegations, the court of appeals found there was an insufficient showing of a conflict that would warrant the intrusive act of appointing a guardian ad litem. Thus it is clear the conflict of interest must be a very substantial one, and not just a dispute between the parties over which parent should have custody of their children.

The Washington Supreme Court in *Troxel* held that the Constitution permits state interference with parent's protected rights only to prevent harm to a child.

Petitioner suggests these state court opinions present an appropriate analysis of the 14th Amendment's limitations

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[13] *Id.*

on guardian ad litem appointments, and correctly hold that such appointments should be limited to cases where there is a showing that the children's parents, by conflict or otherwise, are unable or unwilling to perceive or advance their children's best interests or where there is objective evidence indicating the parties children were endangered before a guardian ad litem is appointed. In summary, these opinions recognize there must be an overriding state interest to warrant any infringement of parents' 14th Amendment rights.

In the case at hand, the trial court appointed a guardian ad litem without finding a conflict of interest between the parties that would prevent them from perceiving or advancing their children's best interests without the assistance of a guardian ad litem, and the record does not support such a finding. There is no objective evidence that the children were in any danger. Respondent alleged at trial that the children were malnourished due to Petitioner's neglect; however, the objective evidence consisting of the children's medical records demonstrated the children were not malnourished. These records show the children were "well-appearing," "well-nourished" and "well-developed." None of the medical records contained any suggestion that the children were malnourished, abused or neglected. No other exhibits were entered regarding the health of the children; therefore, the objective evidence does not support the appointment of a guardian ad litem.

The key to the evaluation of whether there is an overriding state interest that warrants intrusion into a parent's protected sphere, is the recognition of the burden to demonstrate a conflict of interest between the parties or a danger to the children. An allegation of such conflict or danger is not enough. In this case, the record contains only allegations, and does not contain any facts that demonstrate the need to infringe upon Petitioner's parental rights. For these reasons, Petitioner submits the appointment of a

guardian ad litem under her circumstances was constitutionally prohibited.

B. The appointment of a guardian ad litem was not a reasonable infringement upon Petitioner's protected parental rights.

As set forth above, Petitioner submits that the facts of her case do not warrant the state interference of the guardian ad litem appointment; however, in the event this Court determines the record supports the finding of an overriding state interest that would warrant an infringement on Petitioner's parental rights, there is a second component to the 14th Amendment protection that demonstrates the appointment of a guardian ad litem was constitutionally infirm.

Petitioner suggests in cases where it is determined that an overriding state interest exists, the form of the state interference with the protected right must be carefully tailored to address that state interest in a manner that is least intrusive upon the protected right. Although it may not be necessary for the Court to reach this issue to determine that the appointment of the guardian ad litem was inappropriate in this particular case, Petitioner suggests this analysis warrants discussion as it will demonstrate why such appointments are not justified in the vast majority of cases.

In order for the form of the state interference to be carefully tailored to address the state interest, it must address the state's concern in the most direct and efficient manner. Thus if the state interference involves the appointment of an expert to perform an evaluation that infringes upon a parent's protected custody rights, the type of expert chosen must be appropriate for the court-appointed task.

It is under this second component of the constitutional analysis that the weakness of the guardian ad litem appointments in general becomes readily apparent. The current amorphous designation of guardian ad litem

cannot meet this requirement in the majority of cases, including the case at hand.

If an overriding state interest is demonstrated that involves a health or medical issue, the trial court should appoint a physician to evaluate the concern. If the state's interest involves a psychological issue, the court should appoint a psychiatrist, psychologist or counselor. If the state's interest involves an abuse issue, the court should appoint a forensic interviewer, social worker, and/or physician. These are the typical concerns that warrant investigation in custody cases, and none of these concerns are best evaluated by a guardian ad litem.

In the case at hand, the guardian ad litem was not the most competent person to submit a report "regarding recommendations for joint physical custody and/or parenting time" as directed by the trial court. The trial court should have appointed a psychologist, social worker, or other professional trained in custody evaluations to perform this task.

The record in this case clearly demonstrates that the guardian ad litem was not competent to perform the evaluation requested by the court. At the oral argument on Petitioner's Motion for New Trial, the trial court asked the guardian ad litem for his position on the motion, and he stated the following:

> "Your Honor, I've been appointed guardian ad litem on a lot of cases, and it wasn't until recent times that they've been putting us on custody matters. When I first started being a guardian ad litem under the contract was just to see if there was an issue of dependency, where a child has no parent.
>
> In recent months, maybe within the last year or so, they've been appointing us to domestic relations cases, and basically sending us out to evaluate custody situations,

and I don't think the attorneys under the contract have a clear understanding of what their purpose is on that. I mean I've gone out to homes and I try to evaluate the matters, but I'm not a custody evaluator, Your Honor."[14]

"I guess my main point, Your Honor, is I'm making custody decisions only on small amount of time of visits, and I don't know all the parent situations. Most of the time being a guardian ad litem, I'm usually going to go out to a home and see if a parent is able to parent their children, whether or not there's going to be an issue of dependency. And I would normally file a dependency if I thought there was not parent or guardian able to take care of the children."[15]

". . . I think I got in a situation where I felt I needed to make some kind of custody decision, where maybe that's not my role."[16]

Based upon the foregoing testimony of the guardian ad litem, there can be no question that he was not the most competent expert to make a recommendation to the court regarding custody and access. Further, the guardian ad litem makes it clear that he is expressing the sentiments of other guardians ad litem who are appointed to perform custody evaluations, thus supporting Petitioner's contention that this is a widespread problem.

In the instant action, it was alleged that Petitioner may not have been providing the children with appropriate nutrition because she is anorexic. It was also alleged that

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[14] Trans. of Oral Arg. on Petitioner's Motion for New Trial, May 21, 2003, p.11, l.10 -18.
[15] Id., p. 12, l. 3 - 8.
[16] Id., p. 19, l. 22 - 23.

Petitioner's home was dirty. Even if these concerns warranted some type of evaluation, an appropriate limit to the state interference would be a medical evaluation of the children and/or a home visit by a social worker. The guardian ad litem did not have any specialized training to address either of the concerns raised, and was not competent to evaluate the concerns and relate them to an evaluation of custody.

The guardian ad litem's lack of training and experience in evaluating custody matters is particularly problematic in this case, because no other expert was charged with the responsibility of evaluating and making recommendations to the trial court regarding custody and access.

Even though guardians ad litem typically do not have any training in custodial evaluations, the trial courts still view them as some form of expert in family law matters. In the underlying custody trial, the court stated:

> "The only independent witness we had and testified wasn't in line with one side or the other, was the court-appointed guardian ad litem, Mr. Arroyo. Mr. Arroyo is an officer of the court, and the court gives great weight to his report, and his testimony."[17]

Thus it appears that the court made his decision to change physical custody based primarily on the guardian ad litem's report and testimony, which focused primarily on the appearance of the parents' homes during one 20 – 30 minute visit. Neither the guardian ad litem report, nor his testimony addressed the factors the court is required to consider pursuant to Arizona's custody statute. Thereafter, the trial court signed a Decree of Dissolution of Marriage that did not

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[17] Trans. of Hrg., March 10, 2003, p. 26, l. 4 - 7.

contain the written findings regarding joint custody required by Arizona law.

Pursuant to the foregoing, Petitioner submits the facts of her case did not justify the infringement upon her protected parenting rights. Therefore, the guardian ad litem appointment violated the Fourteenth Amendment protection of Petitioner's right of custody and control of her children. Petitioner further submits the nature of the state's interference with her protected parental rights was unreasonable, because the guardian ad litem was not competent to perform the appointed task.

Argument for Question 2

II. Requiring Petitioner to participate in a custody trial five minutes after receiving the guardian ad litem report containing custody and access recommendations violated Petitioner's 14th Amendment Procedural Due Process rights.

It is undisputed that the guardian ad litem did not provide the parties with a copy of his report until approximately five minutes before the custody trial. It is also undisputed that the guardian ad litem report contained custody and access recommendations. It is clear from the record that the trial court placed great weight on the guardian ad litem opinions, and in this case, the guardian ad litem was the only independent witness who testified on the custody issue. Based upon these undisputed facts, the trial court clearly violated Petitioner's procedural due process rights by requiring her to participate in the custody trial 5 minutes after receiving the guardian ad litem report.

States typically have the power to regulate the procedure for adjudicating controversies; however, the procedure utilized must not be arbitrary or unreasonable and must satisfy constitutional requirements of notice and an opportunity to be heard at a meaningful time and in a

meaningful manner. Requirements of procedural due process apply when there is a violation of a liberty interest protected by the 14th Amendment. When procedural due process must be afforded because a liberty interest is protected by the 14th Amendment, there must be a determination of what process is due based upon the particular liberty interest.

The interest in this case is parents' fundamental liberty interest in the care, custody and control of their children. The procedural due process issue is what notice a parent should receive regarding a guardian ad litem's findings and recommendations regarding child custody, and whether 5 minutes notice prior to trial is sufficient for the circumstances.

The circumstances of our case involve a custody trial, where the guardian ad litem is the only "expert witness" that testified regarding the custody issue. The guardian ad litem was appointed by the court to evaluate the ultimate issue of the trial, and report his findings and recommendations.

The applicable state procedural rule requires that custody evaluations be mailed to the parties ten days prior to the trial. In the order appointing the guardian ad litem, the trial court, in contravention of state law, required the guardian ad litem to submit a report only three days prior to the trial. In spite of this order, the guardian ad litem provided his report to the parties as they were entering the court room for the custody trial.

Upon reading the guardian ad litem report and the recommendations, Mother became distraught and lost the composure to adequately represent herself at the trial and failed to present to the trial court all of the evidence she possessed that would allow the trial court to enter a custody award in the best interests of the parties' minor children.

Given the fundamental nature of the protected parental interest in this case, combined with the significance of the guardian ad litem report, which goes to the ultimate issue of the trial, Petitioner is entitled to a meaningful

opportunity to assess this evidence. Five minutes certainly did not allow Petitioner a meaningful opportunity to read, evaluate, and if necessary, prepare a rebuttal of the guardian ad litem report. Moreover, it is not unreasonable to draw the conclusion that the timing of the disclosure impacted Mother's ability to present her case at trial, and resulted in the Court entering orders without hearing the merits of the case.

The record clearly demonstrates the trial court was not concerned with Petitioner's procedural due process rights and whether she had a fair trial. At the custody trial, the court stated, "The court's obligation is not to consider the interest of the parents. The court's obligation is to consider the best interests of the children." At the hearing on the motion for new trial, the court affirmed this view in stating, ". . .the issue is not whether your client liked the result or whether she had a fair trial. The issue was, was the best interest of the children served that day."

At the hearing to address Petitioner's motion for new trial, the trial court also indicates its belief that Petitioner had waived her objections to the appointment of a guardian ad litem and the introduction into evidence of his delinquent report because she did not object at the time of trial.[18] However, the procedural due process applicable to a liberty interest protected by the 14th Amendment cannot be waived.

Clearly, in the circumstances of this case, Petitioner's procedural due process rights were violated by requiring her to participate in a custody trial after receiving the guardian ad litem report 5 minutes prior to trial. Petitioner requests this Court define the 14th Amendment procedural due process requirements with regard to notice of guardian ad litem opinions and recommendations.

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[18] Trans. of Oral Arg. on Petitioner's Motion for New Trial, May 21, 2003, p. 3. l. 15 - p.4, l. 2.

CONCLUSION

This case involves fundamental substantive and procedural due process protections. These protections have clearly been subjected to state interference through the appointment of a guardian ad litem. Petitioner submits this appointment was unwarranted, because it was not demonstrated at trial that there was an overriding state interest that would justify any state interference with Petitioner's fundamental liberty interest in the care, custody and control of her children. Even if this Court determines there was an overriding state interest that would warrant some type of intrusion into Petitioner's private family life, the appointment of a guardian ad litem was an unreasonable infringement upon Petitioner's protected parental rights.

Although the issue becomes moot if the Court agrees with Petitioner's position regarding the foregoing issue, as this is an important matter involving a significant due process right, Petitioner requests this Court find that Petitioner's 14th Amendment procedural due process rights were violated by requiring her to participate in the custody trial only five minutes after receiving the guardian ad litem report. Petitioner further requests the Court clarify the 14th Amendment's procedural due process requirements for disclosure of reports containing custody and access recommendations.

As a remedy for the due process violations, Petitioner requests this Court vacate the trial court's order appointing a guardian ad litem to make custody and access recommendations, vacate the order transferring physical custody of the parties' children to Respondent, and order this matter be set for a new trial.

As a final matter, Petitioner submits the discussion of the issues presented demonstrates the long-standing failure of the state courts and legislatures to define the guardian ad litem role. Petitioner submits the guardian ad litem designation should be abandoned in favor of well-defined

roles of attorney, psychologist, physician, social worker, etc., which have specific areas of expertise and are capable of performing competent evaluations based upon the needs of the particular circumstance. In the alternative, Petitioner requests the Court clarify the role and limitations of authority for guardians ad litem to eliminate the confusion regarding their appropriate appointment.

RESPECTFULLY SUBMITTED this 26th day of January, 2004.

PATTERSON & SIMIELE

By _____

Scott L. Patterson
5420 S. Lakeshore Dr., Ste. 101
Tempe, Arizona 85283
Attorney for Petitioner

APPENDIX

1. Minute Entry/Order entered January 30, 2003
2. Minute Entry/Order entered March 20, 2003
3 Minute Entry entered May 28, 2003
4. Decree of Dissolution of Marriage entered May 23, 2003
5. Order declining to accept jurisdiction by Arizona Court of Appeals, Division One dated July 23, 2003
6. Denial of Petition for Review by Arizona Supreme Court dated October 28, 2003
7. Order declining to accept jurisdiction of Petition for Special Action by Arizona Supreme Court dated October 29, 2003

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2002-004794 01/27/2003

CLERK OF THE COURT

HON. EDWARD O. BURKE M. MINKOW

Deputy

FILED: 01/30/2003

IN RE THE MARRIAGE OF
DIANA ANDREWS

DIANA ANDREWS
6314 N 40TH DR
PHOENIX AZ 8 5019

JEFFREY ALLEN ANDREWS

CHRISTINA C ORTECHO
ROLAND ARROYO
DOCKET-FAMILY COURT CCC
SUPPORT SERVICES-CCC

MINUTE ENTRY

Prior to the commencement of the trial. Respondent's exhibits 1 through 5 are marked for identification.

10:26 a.m. This is the time set for Trial to the Court. Petitioner is present on her own behalf. Respondent is present and represented by above-named counsel.

A recording of this proceeding is being made by CD (FTR) in lieu of a court reporter.

Diana Andrews. Jeffrey Allen Andrews, Richard Rodriguez and Felicia Rodriguez are sworn.

Diana Andrews testifies and provides jurisdictional testimony.

Petitioner's exhibit 6 is marked for identification and received in evidence.

Jeffrey Andrews testifies.

Respondent's exhibits 1 through 4 are received in evidence.

Richard Rodriguez testifies.

Felicia Rodriguez testifies.

Diana Andrews resumes the stand and testifies further.

Respondent's exhibit 5 is received in evidence.

11:24 am. Court stands at recess.

12:01 a.m. Court reconvenes with the parties and counsel present.

DISSOLUTION OF MARRIAGE

THE COURT FINDS that at least one of the parties has been domiciled in the State of Arizona for more than 90 days immediately preceding the filing of the Petition; that the conciliation provisions of A.R.S. § 25-381.09, and the domestic relations education provisions of A.R.S. §25352 either do not apply or have been met; that the marriage is irretrievably broken and there is no reasonable prospect for reconciliation.

To the extent it has jurisdiction to do so, the Court has considered and made provisions for maintenance and disposition of property, and where applicable, support, custody and visitation.

IT IS ORDERED that the marriage heretofore existing between the parties is dissolved and each party is returned to the status of a single person effective upon the signing and entry of this Decree.

IT IS FURTHER ORDERED denying Petitioner's request for attorney's fees.

IT IS FURTHER ORDERED vacating Commission Foster's order regarding child support.

IT IS FURTHER ORDERED reinstating Father's obligation to pay child support for the minor child(ren) to

Mother in the sum of $506.61 per month effective January 1, 2003. all in accordance with the formal written.

ISSUED: Order of Assignment

IT IS FURTHER ORDERED directing counsel to submit a Decree of Dissolution, consistent with the Court's orders stated on the record, to the other side and to the Court for review and signature.

Docket Code 230 Form D230 Page 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC2002-004794 01/27/2003

IT IS FURTHER ORDERED setting this matter for Evidentiary Hearing on March 10, 2003 at 9:00 a.m. in this division.

125 West Washington
Old Courthouse
Courtroom 002
Phoenix, AZ 85003

IT IS FURTHER ORDERED that both parties shall exchange the Affidavit of Financial Information within five (5) of today's date and, further, that the original documents are to be filed with this Court.

Said hearing will be no longer than 45 minutes.

Each party shall have one-half of the allotted time to present their case. The hearing may proceed by avowal if the parties so stipulate, however, the Court will take testimony when it deems it necessary. If either party wishes to call witnesses, they shall disclose the names and telephone numbers of their witnesses to the other party ten judicial days prior to the hearing.

The Court encourages all parties to make a good faith effort to resolve these issues without Court intervention.

IT IS ORDERED that the parties and counsel, if represented, shall meet in person no less than ten days prior to the date set for hearing unless an Order of Protection is in effect. At this meeting, the parties and counsel, if

represented, shall use their best efforts to resolve the issues raised in the Petition or Motion now scheduled for hearing.

IT IS FURTHER ORDERED that a list of potential witnesses and exhibits be exchanged between the parties at least 10 days prior to the hearing.

IT IS FURTHER ORDERED that if child support and/or spousal maintenance are at issue, the parties shall prepare and exchange Parent's Worksheet for Child Support Amount, as applicable, no less than five days prior to the hearing date.

IT IS FURTHER ORDERED that all exhibits for the hearing be presented to the Clerk of this division no later than March 3, 2003 for marking, or they will be precluded from the hearing. Exhibits shall be accompanied with a numbered list, which lists each exhibit, and each exhibit shall be separated with a blank sheet of paper. All exhibits presented shall have been exchanged between the parties. Duplicate exhibits shall not be presented for marking.

Failure to comply with the above orders may result in the imposition of sanctions.

NOTE: All court proceedings are recorded by audio method and not by a court reporter. Any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.

IT IS ORDERED appointing Roland Arroyo as Guardian Ad Litem to represent the child(ren), Tyler, Kayla and Maygan in this case.

IT IS FURTHER ORDERED that Mr. Arroyo submit a report regarding recommendations for joint physical custody and/or parenting time by March 7, 2003.

IT IS FURTHER ORDERED that the Guardian Ad Litem shall have authority to:

a) Meet with the child(ren);

b) Meet and interview the parents, spouses, significant others, and all adults living in the household;

c) Visit the home(s) of the parents to determine if the environments are appropriate for the child(ren) ;

d) Investigate and review both parents', their spouses' and significant others' backgrounds with regard to criminal arrests and convictions;

e) Determine if drug testing by either or both parents is needed;

f) Review the child(ren)'s school/daycare records, psychological evaluations, and counseling records;

g) Visit and interview the child(ren)'s daycare provider; and

h) Review law enforcement, court, or Child Protective Services reports concerning the child(ren).

IT IS ORDERED that any and all day care, schools, school districts ,and personnel thereof shall fully cooperate with guardians ad litem representing the child(ren) in this action by allowing access to all educational records of the child(ren), including but not limited to records pertaining to day care/school attendance, behavior, academic progress, and psychological evaluations, and shall discuss the contents and meaning thereof with him/her.

IT IS FURTHER ORDERED that any and all hospitals, doctors' offices and personnel thereof shall fully cooperate with guardians ad litem representing the child(ren) in this matter by allowing access to all medical/dental records of the child(ren), including but not limited to

records pertaining to diagnosis, treatment, and prognosis, and shall discuss the contents and meaning thereof with him/her.

IT IS FURTHER ORDERED that any and all police department, sheriffs' department, law enforcement agencies, and personnel thereof shall fully cooperate with guardians ad litem representing the child(ren) in this matter by allowing access to all police/sheriff/law enforcement records and reports of the child(ren)s parents, stepparents, or significant others of the parents, including but not limited to records pertaining to arrests, convictions, and narrative reports.

IT IS FURTHER ORDERED that Child Protective Services, the Department of Economic Security, the Department of Health services and personnel thereof shall fully cooperate with guardians ad litem representing the child(ren) in this matter by allowing access to all records and reports of the child(ren), child(ren)'s parents, stepparents, or significant others of the parents, including but not limited to records pertaining to sexual abuse, parenting skills, behavior, psychologica/psychiatric evaluations, and allegations of child abuse, sexual abuse and neglect.

The Guardian Ad Litem shall attend all court hearings concerning the children unless excused by the Court upon written motion, and shall report to the Court in writing or orally at the hearing.

The Guardian Ad Litem has limited immunity consistent with Arizona case law applicable to Officers of the Court as to all actions undertaken pursuant to the Court appointment and this Order.

Any alleged impropriety or unethical conduct by the Guardian Ad Litem shall be brought to the attention of the Court in writing.

Authority: A.R.S. 25-405 and 406; Rule 17(a), A.RC.P.

12:10 p.m. Matter concludes.

/S/ Edward O. Burke
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2002-004794 03/10/2003
CLERK OF THE COURT
HON. EDWARD O. BURKE V. Figueroa
Deputy

FILED: 03/20/2003

IN RE THE MARRIAGE OF
DIANA ANDREWS

DIANA ANDREWS
6314 N. 40TH DRIVE
PHOENIX AZ 85019

AND

JEFFREY ALLEN ANDREWS

MICHAEL P SCHLOSS
ROLAND ARROYO
SUPPORT SERVICES-CCC

MINUTE ENTRY

10:06 a.m. This is the time set for Evidentiary Hearing. Petitioner is present appearing on her own behalf. Respondent is present with above-named counsel. Guardian Ad Litem Roland Arroyo, is present, telephonically appearing on behalf of the minor children.

A recording of this proceeding is made by CD (FTR) in lieu of a court reporter.

Guardian Ad Litem, Roland Arroyo, presents avowals to the Court and is excused.

Counsel for Father presents avowals to the Court.

Mother presents statements to the Court and answers the Court's questions.

Diana Andrews and Jeffrey Allen Andrews are sworn.

Mother testifies.

Charles Andrews is sworn, takes the stand and testifies. Anthony Payne is sworn, takes the stand and testifies.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2002-004794 03/10/21003

Father takes the stand and testifies.

Counsel for Father presents closing statements to the Court.

Based upon the testimony presented,

IT IS ORDERED transferring custody of the parties' minor children to Father immediately, effective today, Monday, March 10, 2003.

IT IS ORDERED that Mother shall have parenting time with the minor children on alternating weekends commencing on Friday, March 14, 2003 from 5:30 p.m. until Sunday at 6:00 p.m.

IT IS ORDERED that Mother shall also have an additional day, every week, to exercise parenting time with the minor children, which is Wednesday from after school until 7:30 p.m. at which time the minor children shall be dropped off at Father's residence. If the parties wish to modify the additional day for parenting time from Wednesday to a different day they may do so.

IT IS ORDERED that due to there being an Order of Protection currently in place once Mother's parenting time has concluded, Mother may have her Fiancee drop the minor children off at Father's residence or Mother may drop the minor children off at curbside with Mother providing Father with prior notification of doing such.

IT IS FURTHER ORDERED that until the end of this school semester, the minor children shall remain in the existing schools that they are currently attending.

IT IS ORDERED that the parties shall exercise Joint Custody of the parties' minor children with Father being designated as the primary residential parent.

IT IS FURTHER ORDERED that commencing March 1, 2003, Father's child support obligation payments to Mother shall cease. Based upon an attributed income of minimum wage to Mother she shall pay child support to Father in the amount of $116.21 per month commencing March 1, 2003. Mother shall pay said child support obligation payment through the Clearinghouse.

IT IS ORDERED approving and settling formal written Order of Assignment signed by the Court on March 14, 2003 and filed (entered) by the clerk.

Until the wage assignment becomes effective, it is the responsibility of the party obligated to pay child support to pay the support to Support Payment Clearinghouse, P. O. Box 52107, Phoenix, Arizona 85072-2107. The payment should show the case number and/or ATLAS case number and the name of the party paying support and the name of the party who will receive the payment.

If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

Any change in the paying party's employment and any change in the residential address of either party must be submitted to the Clerk's Office, in writing, within ten (lO) days of the change (A.R.S. 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of Court.

IT IS ORDERED that Mother has a right to appeal said ruling through the Arizona Court of Appeals.

10:54 a.m. Matter concludes.

FILED: Order of Assignment.

Later:

In considering the factors set in A.R.S. 25-403 (a) the Court considered all the relevant factors and finds as follows:

1. Each parent wished to have custody of the minor children.

2. No admissible evidence was admitted as to the wishes of the minor children.

3. The interaction and inter relationship with the minor children and the parents indicates that the children would be better off at this time with Father.

4. During the past 30 days the minor children have adjusted to Father's home.

5. The mental and physical health of Father is better than Mother's.

6. The Court finds that each parent would act equally in allowing continuing contact with the other parent.

7. Although Mother has provided the primary care of the minor children. Father has done so during the last 30 days.

8. The Court finds no coercion or duress used by either parent.

/S/ HON. EDWARD O. BURKE
JUDICIAL OFFICER OF THE SUPERIOR COURT

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2002-004794 05/23/2003

CLERK OF THE COURT

HON. EDWARD O. BURKE M. MINKOW
Deputy

Atlas
DR Caption Choice
DIANA ANDREWS
AND
JEFFREY ALLEN ANDREWS

FILED: 05/28/2003

SCOTT L PATTERSON

MICHAEL P SCHLOSS
ROLAND ARROYO

MINUTE ENTRY

The Court, having had Petitioner (Mother's) Motion for a New Trial under advisement, enters the following Decision.

Mother moved for a new trial under Rule 59(a)(3) of Civil Procedure claiming that in the January 27, 2003, trial the issues of custody, access and child support were not addressed by the Court and that an evidentiary hearing was scheduled to address these issues on March 10, 2003.

Rule 59(a)(3) allows for a new trial ". . . for any of the following causes materially affecting that party's rights: 3. Accident or surprise which could not have been prevented by ordinary prudence."

The Court has carefully listened to the recording of the January 27, 2003, dissolution trial. Counsel for Father began by stating that there were issues of unfitness of the Mother and that a Guardian Ad Litem should be appointed because of issues of the wellness and fitness of the children. Both parties stated that they wished to proceed with the divorce.

During the trial, Father called Felicia Rodriguez as a witness who expressed her concern about Mother's house

being "really dirty, grungy, and `dirty dirty'." She also testified that Mother left the children alone to watch television.

Father and Grandfather also testified to the dirty living conditions.

Mother testified that she had spent time in the Behavioral Health Center getting treatment for anorexia and that she should be in counseling but was not because she couldn't afford it. She also testified that Father is a good father.

At the conclusion of the hearing, after reviewing all the exhibits, the Court commented that it was concerned about the children's welfare and appointed a Guardian Ad Litem who was to report his findings by March 7, 2003. In the interim, the joint custody order would stay in place. No one objected to that procedure.

The Court stated that the Guardian Ad Litem was appointed to investigate and make recommendations on the joint custody and parenting time issues. The Court did not appoint the Guardian Ad Litem to do a custody evaluation as contended by Mother. The Guardian Ad Litem was appointed to investigate the living conditions of the children because the Court had heard testimony only from Father and his witnesses about the conditions of Mother's home and wanted an independent view of the living conditions by an officer of the Court before making a custody decision.

The Guardian Ad Litem's report was consistent with the report of Father's witnesses who testified that the house was really dirty and that he was concerned about the welfare of the children.

To sustain a motion for a new trial on the ground of surprise, the surprise must arise from an incident or event

that could not have been discovered or anticipated and rectified prior to trial. Pacht v. Morris, 107 Ariz. 392, 489 P.2d 29 (1971).

Mother can hardly claim that the report of the Guardian Ad Litem could not have been discovered or anticipated prior to the trial. Mother attended the January 27, 2003, hearing and heard the testimony of Father's witness to the effect that the house was in a dirty condition and that he was concerned for the welfare for the children and that a nutritional study needed to be done. The Guardian Ad Litem visited Mother's home the week before the subsequent hearing. The Guardian Ad Litem reported only what he observed during his visit. Mother was present during the Guardian's visit. Mother was present at the January 27, 2003, hearing when the Court ordered that the Guardian Ad Litem's report be filed March 7, 2003, for the March 10, 2003, hearing.

Therefore, Mother cannot claim that this was an event that could not have been discovered or anticipated.

The Court's order making Father the primary residential parent was supported not only by the Guardian Ad Litem's report, but the testimony of Charles Andrews, who testified to the children's appearance and the condition of the house on at least 60 occasions, Father and Ms. Rodriguez.

IT IS THEREFORE ORDERED DENYING THE MOTION FOR A NEW TRIAL provided, however, that Mother may request a full custody evaluation from Conciliation Services or a private provider and petition the Court at any time for a change in the designation of the primary residential parent should grounds exist to make such a change.

IT IS ORDERED approving and settling formal written Decree of Dissolution of Marriage signed by the Court May 22, 2003 and filed (entered) by the Clerk on May 23, 2003.

SCHLOSS LAW OFFICES, P.C.
1702 East Highland, Suite 414
Phoenix, Arizona
Michael P. Schloss, Bar No. 019283
Respondent

FILED:
05/23/2003

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

In Re the Marriage of:	)
	) No. FC2002-004794
DIANA ANDREWS,	)
Petitioner,	) DECREE OF
And	) DISSOLUTION OF
	) MARRIAGE
JEFFREY ALLEN ANDREWS,	) (With Minor
Respondent.	) Children)
	)

This matter coming before the Court on January 27th, 2003 for trial, the Court having acquired jurisdiction on or about the 1st day of May, 2002, by Service of Process upon Respondent and same being filed with the Court;
THE COURT FINDS as follows:

1. At the time this action was commenced, one or both of the parties' had been domiciled in the State of Arizona for at least ninety (90) days prior to the filing of the petition for dissolution of marriage;

2. The parties were married on November 15th, 1996 in Glendale, Arizona, and since that time have been husband and wife;

3. The Conciliation provisions of A.R.S. §25-381.09 either do not apply or have been met, to wit: the parties were advised of the conciliation court and the free marriage counseling offered thereby, however, each party believes that such counseling would not enable them to save their marriage;

4. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation;

5. There are three minor children common to the parties, namely: Tyler Andrews having been born on September 30th,1996; Kayla Andrews having been born on October 3rd 1997; and Maygan Andrews having been born on February 3rd, 2000.

6. Wife is not now pregnant;

7. This Court has jurisdiction to determine child custody, as the minor children of the parties were domiciled in Maricopa County, Arizona at the time of the filing of the Petition for Dissolution of Marriage and are now domiciled in Maricopa County, Arizona;

8. To the extent it has the jurisdiction to do so, the Court has considered, approved, and made provisions for the disposition of property and debts;

9. At least sixty (60) days have elapsed after the date of service of process or acceptance of service of process herein;

10. The parties have complied with the provisions of A.R.S. §25-352, et.
M.; and

11. That the provisions of the decree are fair and equitable under the circumstances.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The marriage previously existing between the parties is dissolved and each party is restored to the status of a single person;

2. The parties are awarded joint legal custody of the minor children with Respondent/Father being designated as the primary, residential parent of: Tyler Andrews having been born on September 30th, 1996; Kayla Andrews having been born on October 3rd, 1997; and Maygan Andrews having been born on February 3rd, 2000 with parenting time to Mother as follows: every other weekend from Friday at 5:30 p.m. to Sunday at 6:00 p.m. beginning March 14`h, 2003 and

every Wednesday from after school to 7:30 p.m.; 3. That the Court hereby adopts the Worksheet, which is attached to this Decree as the findings of the gross income, adjusted gross income, basic child support obligation and the amount of the child support awarded. Based upon said findings, the Court ORDERS that Petitioner/Mother shall pay through the Clearinghouse, in the form of a mandatory wage assignment, the sum of $116.21 per month for child support beginning March 1st, 2003 and continue to pay same until such time as a child dies, is emancipated or reaches the age of majority. This child support is to begin on March 1 St, 2003 and continue to be due on the first day of each month thereafter. All payments are to be made through the Support Payment Clearinghouse, P.O. Box 52107, Phoenix, Arizona 85072-2107 by wage assignment. If a child reaches the age of majority and the child is completing his last year of high school, then child support shall continue to be provided during the period in which a child is actually attending high school. Until such time as the wage assignment becomes effective, Petitioner/Mother shall pay the child support directly to the Respondent/Father. The Petitioner/Mother shall also pay to the Clearinghouse any service fee for this child support assessment.

Under state law (section 25-503, subsection I, Arizona Revised Statues) the right to collect unpaid child support payments ends three years after the last child included in the child support order emancipates[19]. To collect the unpaid support, the person owed child support must file a court action to obtain a written judgment for the unpaid amount due before the end of the three year period. (Limited exceptions exist and are found in A.R.S.25-320B).

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[19] A child is emancipated: On the date of the child's marriage; on the child's 18'h birthday; when the child is adopted; when the child dies; when the support obligation is terminated by court if support is extended beyond the age of 18.

Unless the court has ordered otherwise, the parties affected by this order shall notify the Clerk of the Court/Clearinghouse of their addresses and shall notify the Clerk/Clearinghouse of any change of address within ten (10) days. The paying party shall also notify the Clerk/Clearinghouse of the names and addresses of the paying party's employers or other payor and, within ten (10) days, of any changes thereof.

4. That every twenty-four (24) months, commencing twenty-four (24) months from the day of the entry of this Decree of Dissolution of Marriage, the parties shall exchange financial information to include, but not necessarily be limited to, income tax returns and current pay stubs. The information provided every twenty-four (24) months shall be kept confidential except as may be needed in domestic relations proceedings. The Court further directs that if a written request for financial information is not complied with, a Subpoena duces tecum shall be issued.

5. Until such time as the obligation for child support ceases or ordered otherwise, Husband shall maintain health, dental and medical insurance for the benefit of the minor children and pay all premiums when they become due. Any health and medical, including dental, orthodontia, optical, and psychological expenses of the minor child not covered by insurance shall be paid by Husband and Wife, with Husband paying 50% and Wife paying 50%. All unreimbursed expenses not covered by insurance shall be submitted to Husband by Wife within ten days of incurring said bill along with receipt or the explanation of benefits, if applicable. Husband shall pay within a ten days of receipt of said documentation.

6. Respondent/Father shall exercise the tax exemption of the minor children every three out of four years beginning with the year 2002.

7. As an equitable division of the community, joint and common property of the parties, Husband is awarded as his sole and separate property, subject to any liens or

encumbrances thereon which Husband shall assume, pay, and hold Wife harmless therefrom and indemnify Wife against the following:

A. Any and all items of personal property in Husband's possession at the time of the execution of the Decree of Dissolution of Marriage, including, but not necessarily limited to:

1. All items of personal clothing, jewelry and effects;

2. Any and all financial accounts and vehicle in his name;

8. As an equitable division of the community, joint and common property of the parties, Wife is awarded as her sole and separate property, subject to any liens or encumbrances thereon which Wife shall assume, pay, and hold Husband harmless therefrom and indemnify Husband against the following:

A. Any and all items of personal property in Wife's possession at the time of the execution of the Decree of Dissolution of Marriage, including, but not necessarily limited to:

1 . All items of personal clothing, jewelry and effects;

2. Any and all financial accounts and vehicle in her name;

9. Neither party is entitled to an award of spousal maintenance.

10. As a fair and equitable division of the community, joint and common obligations of the parties, each party shall assume, pay and hold the other harmless therefrom and indemnify the other against any and all indebtedness incurred by that party from and after the date of the service of the Petition for Dissolution of Marriage.

11. Husband shall pay and hold Wife harmless from the following debts:

1. Any and all debts associated with any property Husband is awarded in this Decree; and

2. Any and all debts Husband has incurred since date of service.

12. Wife shall pay and hold Husband harmless from the following debts:

1. Any and all debts associated with any property Wife is awarded in this Decree; and

2. Any and all debts Wife has incurred since date of service.

13. Each party shall be equally financially responsible for the community debt in the amount of $6,100.27. This debt is exclusive and separate from any and all other debt provisions in this decree of dissolution of marriage.

14. Petitioner/Wife shall be restored to her maiden name of: Sena.

DONE IN OPEN COURT this 22nd day of May, 2003.

/s/
Judge of the Superior Court

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIANE ANDREWS, Petitioner, v. THE HONORABLE EDWARD O. BURKE, Judge of the SUPERIOR COURT OF THE COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, Respondent, Judge, JEFFREY ALLEN ANDREWS, Real Party in Interest.	)	1 CA-SA 03-0145 DEPARTMENT D MARICOPA County Superior Court No. FC02-004794 O R D E R

This special action came on regularly for conference this 22nd day of July, 2003, before Presiding Judge William F. Garbarino and Judges Sheldon H. Weisberg and Donn G. Kessler participating.

After consideration,

IT IS ORDERED that the court, in the exercise of its discretion, declines to accept jurisdiction in this special action.

DATED this 23rd day of July, 2003.

/s/
WILLIAM F. GARBARINO, Presiding Judge, Department D

Supreme Court
STATE OF ARIZONA
402 Arizona State Courts Building
1501 West Washington
Phoenix, Arizona 85007-3329
Telephone:
(602) 542-9396

Noel K. Dessaint
Clerk of Court

Kathleen E. Kempley
Chief Deputy Clerk

October 28, 2003

RE: DIANA ANDREWS V. HON. EDWARD BURKE/JEFFREY ANDREWS
Arizona Supreme Court No. CV-03-0319-PR
Court of Appeals Division One No. 1 CA-SA 03-0145
Maricopa County Superior Court No. FC 2002-004794

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 28, 2003, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

FUTHER ORDERED: Request for Attorneys' Fees [Petitioner Diana Andrews] = DENIED.

Record returned to the Court of Appeals, Division One, Phoenix, this 28th day of October, 2003.

Noel K. Dessaint, Clerk

TO:
Scott L. Patterson, Patterson & Simiele PA
Hon. Edward O. Burke, Civil Presiding Judge, Maricopa
County Superior Court
Jeffrey Allen Andrews
Philip G. Urry, Clerk, Court of Appeals, Division One,
Phoenix
West Publishing Company
Lexis – Nexis

Supreme Court
STATE OF ARIZONA
402 Arizona State Courts Building
1501 West Washington
Phoenix, Arizona 85007-3329
Telephone:
(602) 542-9396

Noel K. Dessaint
Clerk of Court

Kathleen E. Kempley
Chief Deputy Clerk

October 29, 2003

RE: DIANA ANDREWS V. HON. EDWARD BURKE/JEFFREY ANDREWS
Arizona Supreme Court No. CV-03-0319-PR
Court of Appeals Division One No. 1 CA-SA 03-0145
Maricopa County Superior Court No. FC 2002-004794

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 28, 2003, in regard to the above-referenced cause:

ORDERED: Motion to Withdraw [Counsel] and Order = DENIED as moot.

FUTHER ORDERED: The Court declines to accept jurisdiction of the Petition for Special Action.

FURTHER ORDERED: Request for Attorneys' Fees [Petitioner Diana Andrews] = DENIED.

Noel K. Dessaint, Clerk

TO:
Scott L. Patterson, Patterson & Simiele PA
Michael P. Schloss, Schloss Law Offices PC
Hon. Edward O. Burke, Civil Presiding Judge, Maricopa County Superior Court
Michael K. Jeanes, Clerk, Maricopa County Superior Court
Dianne Post
Philip G. Urry, Clerk, Court of Appeals, Division One, Phoenix